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COUNSEL FOR HENRY S. MILLER COMMERCIAL, LLC

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

<b>In re:</b>	§	
	§	
<b>HENRY S. MILLER COMMERCIAL, LLC,</b>	§	<b>CASE NO. 09-34422-SGJ-7</b>
	§	
<b>Debtor.</b>	§	<b>CHAPTER 7 CASE</b>

**DEBTOR’S UNOPPOSED MOTION TO CONVERT CASE TO CHAPTER 11**

Henry S. Miller Commercial, LLC (the “Debtor”), files this *Unopposed Motion to Convert Case to Chapter 11* (the “Motion”), and respectfully represents as follows:

**I. INTRODUCTION**

1. Through this Motion, the Debtor is seeking an order of this Court converting this case (the “Case”) to Chapter 11 pursuant to Section 706(a) of Title 11 of the United States Code (the “Bankruptcy Code”) and Rule 1017(f)(2) of the Federal Rules of Bankruptcy Procedure.

**II. JURISDICTION**

2. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue

of these proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory ground for the relief sought in this Motion is 11 U.S.C § 706.

### **III. BACKGROUND**

3. On or about July 7, 2009, BNC Lake Jackson Village, L.P., Dallas Clubview Gardens, L.P., Woodside Apartments, L.P. (collectively the “Petitioning Creditors”) commenced this Case against the Debtor by filing the *Involuntary Petition* [Docket No. 1].

4. On or about December 3, 2009, the Debtor agreed to an order for relief. The parties will upload an agreed order for relief.

### **IV. RELIEF REQUESTED**

5. The Debtor respectfully requests that the Court issue an order converting this Case to Chapter 11. Section 706(a) of the Bankruptcy Code provides: “The debtor may convert a case under this chapter to a case under chapter 11, 12, or 13 of this title at any time, if the case has not been converted under sections 1112, 1208, or 1307 of this title.” 11 U.S.C § 706(a). The Debtor respectfully requests that the Court take judicial notice that this Case was commenced under Chapter 7 and has never been converted from another chapter.

6. Section 706(d) forbids conversion of a case from Chapter 7 to another chapter “unless the debtor may be a debtor under such chapter.” 11 U.S.C § 706(d). Section 109(d) allows a person who may be a debtor under chapter 7 (with limited, inapplicable exceptions) to be a debtor under Chapter 11. 11 U.S.C. § 109(d). The Debtor respectfully requests that the Court take judicial notice that it is presently a debtor under Chapter 7. Accordingly, the Debtor may be a debtor under Chapter 11.

7. Debtor has conferred with counsel for the Petitioning Creditors in this matter and they are unopposed to the relief sought herein, so long as 1) the conversion is without prejudice

to any party seeking to re-convert this bankruptcy case to one under Chapter 7 and 2) the Debtor shall not maintain that the Petitioning Creditors non-opposition to the Motion constitutes consent to the case remaining as a Chapter 11.

WHEREFORE, the Debtor prays that (i) the Motion be granted in all aspects; (ii) the Court issue an order converting this Case to Chapter 11; and (iii) Debtor be granted such other and further relief to which the Debtor may be entitled.

Dated: December 16, 2009

Respectfully submitted,

By: /s/ Rakhee V. Patel

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**COUNSEL FOR HENRY S. MILLER  
COMMERCIAL, LLC**

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that, on December 16, 2009, I caused to be served the foregoing pleading upon all parties listed below via hand delivery.

/s/ Rakhee V. Patel  
Rakhee V. Patel

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